

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

EMG TECHNOLOGY, LLC,
Plaintiff,

v.

APPLE INC.,
AMERICAN AIRLINES, INC.,
DELL, INC.,
HYATT CORPORATION,
MARRIOTT INTERNATIONAL, INC., &
BARNES & NOBLE, INC.,

Defendants.

Case No. 6:08-cv-447-LED

JURY TRIAL DEMANDED

**AGREED MOTION TO MODIFY THE DOCKET
CONTROL AND DISCOVERY ORDERS**

The Court's July 20, 2009 Docket Control Order states that Defendants shall comply with P.R. 3-3 and P.R. 3-4 by August 21, 2009. (Dkt. #100). The Court has subsequently granted motions so that Defendants must now comply with P.R. 3-3 and P.R. 3-4 by November 11, 2009. (*See* Dkt. #163.) Plaintiff EMG Technology, LLC ("EMG") and defendants Apple Inc. ("Apple"), American Airlines, Inc. ("American"), and Dell, Inc. ("Dell") have met and conferred and agreed that it is in each of their interests to further extend the date by which defendants Apple and American must comply with P.R. 3-3 and P.R. 3-4 until December 11, 2009.¹ Plaintiff EMG and Defendant Dell, which first appeared in this case on November 6, 2009, are meeting and conferring regarding a proposed schedule with respect to Defendant Dell for compliance with P.R. 3-1, 3-2, 3-3 and 3-4 and the events in the Court's July 20, 2009 Discovery Order (Dkt. #99) and will submit a proposal regarding the same for the Court's consideration.

¹ Defendants Hyatt Corporation; Marriott International, Inc.; and Barnes & Noble, Inc. have not yet answered Plaintiff's Fifth Amended Complaint.

In addition, the Court's July 20, 2009 Discovery Order (Dkt. #99) specifies that (1) Plaintiff is to produce documents relevant to any claim for relief or defensive matter other than those addressed in the Patent Rules (paragraph 2.B.), (2) Defendants will begin rolling document production (paragraph 2.C.i.), and (3) the parties will produce a complete computation of any category of damages (paragraph 2.D.) by October 19, 2009. The Court has subsequently granted a motion so that these three dates are extended to November 16, 2009. (*See* Dkt. #163.) Plaintiff EMG and Defendants Apple and American have further agreed that it is in each of their interests to extend the dates by which (1) EMG must produce documents to Apple and American under paragraph 2.B. of the Discovery Order, (2) defendants Apple and American must begin rolling document production under paragraph 2.C.i. of the Discovery Order, and (3) plaintiff EMG and Defendants Apple and American must produce to each other a complete computation of any category of damages under paragraph 2.D. of the Discovery Order to December 16, 2009.

In addition, the Court's July 20, 2009 Discovery Order (Dkt. #99) specifies that (1) Defendants shall complete their production of documents, data compilations and tangible things in the possession, custody, or control of the defendants that are relevant to the parties pleaded claims or defenses (except for email and source code) by December 18, 2009 (paragraph 2.C.iii.), and that (2) the parties shall exchange privilege logs by December 18, 2009 (paragraph 5.). The Court has subsequently granted a motion so that these dates are extended to January 15, 2010. (*See* Dkt. #163.) Plaintiff EMG and Defendants Apple and American have further agreed that it is in each of their interests to extend the dates by which (1) defendants Apple and American shall complete their production of documents, data compilations and tangible things in their respective possession, custody, or control that are relevant to their respective pleaded claims or defenses (except for email and source code) under paragraph 2.C.iii. of the Discovery

Order, and (2) plaintiff EMG and defendants Apple and American exchange privilege logs with each other under paragraph 5. of the Discovery Order to February 15, 2010.

Accordingly, plaintiff EMG and defendants Apple and American respectfully request that the Court modify:

- A. the Docket Control Order so that the date by which defendants Apple and American must comply with P.R. 3-3 and P.R. 3-4 is extended from November 11, 2009 to December 11, 2009;
- B. the Discovery Order so that the dates by which (1) plaintiff EMG must produce documents to Apple and American under paragraph 2.B. of the Discovery Order, (2) defendants Apple and American must begin rolling document production under paragraph 2.C.i. of the Discovery Order, and (3) plaintiff EMG and defendants Apple and American must produce to each other a complete computation of any category of damages under paragraph 2.D. of the Discovery Order are extended from November 16, 2009 to December 16, 2009; and
- C. the Discovery Order so that the dates by which (1) defendants Apple and American shall complete their production of documents, data compilations and tangible things in their respective possession, custody, or control that are relevant to their respective pleaded claims or defenses (except for email and source code) under paragraph 2.C.iii. of the Discovery Order, and (2) plaintiff EMG and defendants Apple and American exchange privilege logs with each other under paragraph 5. of the Discovery Order are extended from January 15, 2010 to February 19, 2010.

Dated: November 10, 2009

Respectfully Submitted,

By: /s/ Charles Ainsworth

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record, who are deemed to have consented to electronic service, are being served this 10th day of November, 2009, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Charles Ainsworth
CHARLES AINSWORTH